

STATEMENT OF PURPOSE

RS20330

Under a 2000 US Supreme Court case, *Troxell v. Granville*, and a 2006 Idaho Supreme Court case, *Leavitt v. Leavitt*, Idaho's existing grandparent visitation statute is unconstitutional. Both cases were visitation cases. The *Troxell* case stated that, "In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children" and held that the right was a fundamental constitutional right under the Due Process Clause of the 14th Amendment to the US Constitution. The *Leavitt* case cited the *Troxell* case, and stated the burden of proof on the grandparent seeking visitation to be "clear and convincing evidence". These standards must be met in any constitutional visitation statute.

Visitation by grandparents or great-grandparents can be an extremely important stabilizing factor in the grandchild's life. However, since 2000, no constitutional visitation statute has been in existence in Idaho, leaving grandparents and great-grandparents seeking visitation in legal limbo. This bill creates a constitutional statute. The language has been carefully and thoroughly reviewed to comply with the needs and requirements of the family law courts, the child protection act, and other relevant statutes, as well as to meet the requirements of the US and Idaho Supreme Court cases, while not imposing onerous or undue burdens on grandparents.

The bill repeals the current Section 32-719 and replaces it with new language. Paragraph 1 of the bill sets forth four requirements, one of which must exist before a grandparent can petition for visitation. Paragraph 2 contains requirements from the US Supreme Court case that visitation cannot be granted over the objections of a fit parent unless the three requirements in that paragraph are met by clear and convincing evidence (the standard required by the Idaho Supreme Court). Paragraph 3 sets forth factors that the Court may consider in determining the "best interests" of the child. Best interests is one of the tests in Paragraph 2. Paragraph 4 provides that the termination of the parental rights of the child of the grandparent removes the ability of the grandparent to seek visitation. Finally, Paragraph 5 affirms the requirement that a child protection case vests full control in the child protection court and therefore no new visitation action can be filed and any existing visitation order is void. All questions of visitation will then be handled in the child protection action.

This bill will grant grandparents and great-grandparents the ability to seek visitation with grandchildren or great-grandchildren in the appropriate circumstances, while meeting the requirements of the US and Idaho Supreme Court cases. It also properly integrates with the Child Protection Act.

FISCAL NOTE

This bill will not have any negative fiscal impact.

Contact:

Name: Robert L. Aldridge

Office:

Phone: (208) 336-9880